IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

CRAIG MARTIN, Plaintiff, vs. WAL-MART STORES, INC., Defendant.	No. C00-4027 **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANT'S MOTION TO DISMISS OR TRANSFER**

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I. INTRODUCTION

A. Procedural Background

This matter comes before the court pursuant to defendant Wal-Mart Stores, Inc.'s (hereinafter "Wal-Mart") April 3, 2000, Motion to Dismiss or Transfer (#4). Wal-Mart asks that plaintiff Craig Martin's (hereinafter "Martin") complaint be dismissed pursuant to the doctrine of *forum non conveniens* with directions that the matter be re-filed in the Federal District Court for the Southern District of Illinois. In the alternative, Wal-Mart asks that this matter be transferred to the Federal District Court for the Southern District of Illinois pursuant to 28 U.S.C. § 1404(a). Wal-Mart posits the following in support of its motion to transfer and dismiss: (1) Martin is a resident of the state of Iowa who was delivering products to a store owned by Wal-Mart in the state of Illinois; (2) the acts or omissions on which Martin's claim are based occurred at or near the Wal-Mart store located in Illinois; (3) the unloading/lifting device giving rise to the claim is located at the store in Illinois and did not accompany the truck operated by Martin; (4) all the witnesses with knowledge of the maintenance and inspection of the unloading/lifting device and all documents pertaining thereto are located in the state of Illinois; (5) Martin's claim is based on a personal injury which is governed by a two year statute of limitations in both Iowa and Illinois; (6) Illinois law with respect to negligence claims would govern based on Iowa's conflict of laws rule applying the most significant relationship test to tort actions.

On April 17, 2000, Martin filed a resistance to Wal-Mart's motion, arguing that Wal-Mart has the burden of proving all elements necessary for the court to dismiss a claim based on *forum non conveniens*, and because Wal-Mart did not submit any evidence in support of its conclusory points for dismissal, it has failed to meet the necessary burden.

Martin also argues that a motion to dismiss is no longer the proper way to raise questions of *forum non conveniens*. Moreover, Martin argues that Wal-Mart's motion for transfer should be denied because it has not met its burden of establishing that Iowa is an inconvenient forum. On April 27, 2000, Wal-Mart filed a reply to Martin's resistance to its Motion to Dismiss or Transfer.

B. Factual Background

Craig Martin is a resident of O'Brien County, Iowa. Wal-Mart is a Delaware corporation with its principal place of business and home office located in Bentonville, Arkansas. Wal-Mart conducts business and has a registered agent for service of process in the state of Iowa. Martin has brought suit based on diversity in the Northern District of Iowa for personal injuries allegedly sustained while delivering certain goods to a Wal-Mart store located in Olney, Richland County, Illinois.

Martin is a truck driver and the alleged injuries occurred while Martin was using an unloading/lifting device supplied by the Wal-Mart store located in Olney, Illinois to unload the freight from his truck. Martin alleges that the unloading/lifting device provided to him was defective and dangerous and its use resulted in injuries to his back. The underlying theory asserted by Martin is that the Wal-Mart store in Olney, Illinois was negligent in failing to inspect and maintain the unloading/lifting device.

II. LEGAL ANALYSIS

A. Forum Non Conveniens Analysis

The common law doctrine of *forum non conveniens* permits a federal court to dismiss an action because a forum is inconvenient, even though jurisdiction and venue are technically proper. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981). However, in federal courts, the common law doctrine has been, to a large extent, supplanted by 28 U.S.C. § 1404(a), which permits a district

court to transfer, "in the interest of justice," "any civil action to any other district . . . where it might have been brought." "If the more convenient forum is another federal court, . . . the case can be transferred there under § 1404(a) and there is no need for dismissal." *See Terra*, 922 F. Supp. 1334, 1355-56 (discussing the relationship between § 1404(a) and the common-law doctrine of *forum non conveniens*). Therefore, an outright dismissal for inconvenient forum is extremely rare, unless "the possible alternative forum is a state or foreign court.'" *Hartford Fire Ins. Co. v. Westinghouse Electric Corp.*, 725 F. Supp. 317, 321 (S.D. Miss. 1989) (citing *Cowan v. Ford Motor Co.*, 713 F. 2d 100, 103 (5th Cir. 1983)). Indeed, the Supreme Court in *Norwood v. Kirkpatrick*, 349 U.S. 29 (1955), pointed out that "the harshest result of the application of the old doctrine of *forum non conveniens*, dismissal of the action, was eliminated by the provision in § 1404(a) for transfer." *Id.* at 32. The Supreme Court further commented on the common law doctrine of *forum non conveniens* and the transfer provision codified at 28 U.S.C. § 1404(a), stating:

> *Gilbert* held that it was permissible to dismiss an action brought in a District Court in New York by a Virginia plaintiff against a defendant doing business in Virginia for a fire that occurred in Virginia. Such a dismissal would be improper today because of the federal venue transfer statute, 28 U.S.C. § 1404(a): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." By this statute, "[d]istrict courts were given more discretion to transfer . . . than they had to dismiss on grounds of *forum non conveniens*." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 253 (1981). As a consequence, the federal doctrine of *forum non conveniens* has continuing application only in cases where the alternative forum is abroad.

American Dredging Co. v. Miller, 510 U.S. 443, 449 n.2 (1994). Thus, dismissal of a case under the doctrine of *forum non conveniens* is improper provided there is an alternative, federal forum in which the case could have been brought. *Mohamed v. Mazda Motor Corp.*,

90 F. Supp. 2d 757, 767 (E.D. Tex. 2000); *Allstate Ins. Co. v. Wal-Mart Stores Inc.*, 2000 WL 960736 (N.D. Ill. July 11, 2000) (stating that the common law doctrine of *forum non conveniens* was largely supplanted by 28 U.S.C. § 1404(a), and is now limited to situations where the more convenient forum is a foreign court or state court and therefore transfer under § 1404(a) is not possible); *Microfibres, Inc. v. McDevitt-Askew,* 20 F. Supp. 2d 316, 322-23 (D.R.I. 1998) (stating that since the enactment of § 1404(a), the appropriate remedy for an inconvenient forum within the United States where the alternative forum is also within the United States, is to invoke the statute).

In this case, Wal-Mart concedes that the Federal District Court for the Southern District of Illinois is an alternate, federal forum in which this case could have been brought. Therefore, because the common law doctrine of *forum non conveniens* is no longer appropriate under circumstances here, Wal-Mart's motion to dismiss for *forum non conveniens* is denied. The court will now address Wal-Mart's alternative motion—that is, its motion to transfer.

B. Transfer Analysis

Title 28 U.S.C. § 1404(a) "governs the ability of a federal district court to transfer a case to another district." *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d 688, 691 (8th Cir.), *cert. denied*, 118 S. Ct. 629 (1997). Section 1404(a) provides:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

28 U.S.C. § 1404(a). Section 1404(a) was designed "as a 'federal housekeeping measure,' allowing for easy change of venue within a unified federal system." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981) (quoting *Van Dusen v. Barrack*, 376 U.S. 612 (1964)). The court is cognizant of the potential for forum-shopping by the defendant that this transfer statute may present, and appreciates that the statute was not intended to change the balance

of power between the parties; rather, it was intended as a federal judicial housekeeping measure.

"In general, federal courts give considerable deference to a plaintiff's choice of forum and thus the party seeking a transfer under section 1404(a) typically bears the burden of proving that a transfer is warranted." *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 119 F.3d at 695 (citing *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995) and *Scheidt v. Klein*, 956 F.2d 963, 965 (10th Cir. 1992)). The court has no intention of "lightly disturbing" Martin's choice of forum, however, the court will not be bound by an inconvenient forum if other proper considerations warrant transfer.

In its *Terra* decision, the Eighth Circuit Court of Appeals recapitulated the following analytical framework to be employed in considering a motion to transfer under § 1404(a):

> The statutory language reveals three general categories of factors that courts must consider when deciding a motion to transfer: (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) the interests of justice. *Id.* Courts have not, however, limited a district court's evaluation of a transfer motion to these enumerated factors. Instead, courts have recognized that such determinations require a case-by-case evaluation of the particular circumstances at hand and a consideration of all relevant factors.

Terra Int'l, Inc., 119 F.3d at 691 (citing 28 U.S.C. § 1404(a)). In appraising the first two "convenience," categories, the Eighth Circuit Court of Appeals approved of this court's consideration of the following five factors:

> (1) the convenience of the parties, (2) the convenience of the witnesses--including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition testimony, (3) the accessibility to records and documents, (4) the location where the conduct complained of occurred, and (5) the applicability of each forum state's substantive law.

Id. at 696 (citing *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 922 F. Supp. 1334, 1357-61 (N.D. Iowa 1996)).

With respect to the final category, the "interests of justice," the Eighth Circuit Court of Appeals countenanced this court's consideration of the following seven factors:

> (1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative costs to the parties of litigating in each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantages of having a local court determine questions of local law.

Terra Int'l, Inc., 119 F.3d at 696 (citing *Terra Int'l, Inc.*, 922 F. Supp. at 1361-63). With these standards in mind, and remembering that all other things being equal, this action should remain where it was filed, the court turns to consideration of defendant's motion.

1. Factors In The "Transfer" Analysis

The Supreme Court has stated that "section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen*, 376 U.S. at 622). This court must therefore determine which factors are pertinent to this "individualized, case-by-case consideration of convenience and fairness." *Id.*

The statute states one factor explicitly concerning what other venues may be considered to receive the transferred case: the statute permits transfer of a civil action only to a district in which the action "might have been brought." § 28 U.S.C. 1404(a); *United States v. Copley*, 25 F.3d 660, 662 (8th Cir. 1994); *accord In re Warrick*, 70 F.3d 736, 739, (2nd Cir. 1995) (stating that transferee district must be one in which litigation "might have been brought," citing the statute and *Van Dusen*, 376 U.S. at 619-20); *Sunbelt Corp. v. Noble, Denton & Associates, Inc.*, 5 F.3d 28, 33 (3d Cir. 1993) (stating that transferee district was not one in which the action "might have been brought," and therefore the

district court lacked authority to transfer the case there under § 1404(a), and a writ of mandamus was issued to correct the error); *Landmark Land Co., Inc. v. Office of Thrift Supervision,* 948 F.2d 910, 913 (5th Cir. 1991) (stating that transferee district was not one in which action "might have been brought," and district court therefore erred as a matter of law in ordering transfer, because the bankruptcy court of transferee district could not have entertained the action, which did not directly involve the bankruptcy of the plaintiff bank's subsidiaries); *Chrysler Credit Corp. v. Country Chrysler*, 928 F.2d 1509, 1515 (10th Cir. 1991) (stating that § 1404(a) does not allow a court to transfer a suit to a district which lacks personal jurisdiction over the defendants, even if they consent to suit there."). However, the parties do not appear to dispute that Martin's lawsuit "might have been brought" in the Federal District Court for the Southern District of Illinois to which Wal-Mart requests that this lawsuit be transferred. Thus, this requirement of the transfer statute need not detain the court any longer.

a. The convenience of the parties

Plaintiff Martin is a resident of O'Brien County, Iowa. Defendant Wal-Mart is a Delaware Corporation with its home office located in Bentonville, Arkansas. Wal-Mart conducts business and has a registered agent for service of process in the state of Iowa. Wal-Mart does not raise this as a factor that the court should consider in its transfer analysis. Martin, however, claims that litigating in Iowa will be far more convenient than proceeding with this litigation in Illinois. In his affidavit, Martin states that due to the injuries that he allegedly suffered in this case, he is unable to travel great distances because such travel results in significant physical pain.

The exact nature and extent of Martin's physical disabilities, and the resulting effect on his ability to travel, remain subject to ultimate proof at trial. Those matters need not be established to a high degree of certainty for the purpose of ruling on defendant's motion to transfer. For purposes of this motion, the court is unwilling to direct an action which might

pose a risk, of whatever magnitude, to Martin's physical condition or effectively force him to abandon his right to be present at the trial of this lawsuit. It seems reasonable to assume, as this court does, that the inconvenience and risks associated with Martin traveling to the federal courthouse in the Northern District of Iowa are substantially less than those associated with the greater disruption which would be involved in travel to Illinois.

Therefore, upon review, the court concludes that there is nothing inherent about the Northern District of Iowa's location regarding the parties themselves that suggests that their convenience favors a transfer. The court has not been presented with any compelling evidence that litigating in Iowa will be more inconvenient for Wal-Mart as a party than litigating in Illinois will be for Martin. Significantly, moreover, Martin resides in Iowa and Wal-Mart conducts business and has a registered agent for service of process in the state of Iowa. Thus, the location and convenience of the parties does not weigh in favor of transfer. Consequently, the court concludes that Wal-Mart has not demonstrated that a transfer of this action would equitably shift the convenience from one party to the other, much less that the parties' overall convenience would be better served by litigating the claims in Illinois instead of Iowa.

b. The convenience of witnesses

As this court pointed out in its *Terra Int'l, Inc. v. Mississippi Chem. Corp.*, 922 F. Supp. 1334 (N.D. Iowa 1996) decision:

> The question of witness convenience, properly viewed, is whether the forum to which transfer is sought is so inconvenient as to inhibit the access of one party or the other to necessary witnesses. *See, e.g., In re Warrick*, 70 F.3d at 741 (question is which forum "would facilitate the parties' access to the testimony of [key witnesses]"). Furthermore, this question of the accessibility of witnesses depends upon whether those witnesses will willingly appear, whether they can be compelled to appear, and whether alternative means of producing their testimony exist. *Id.*

Terra Int'l, Inc., 922 F. Supp. at 1360.

In this case, Wal-Mart emphasizes that the Southern District Court of Illinois possesses greater ease of access to the witnesses. Wal-Mart asserts that all witnesses with knowledge of the maintenance and inspection of the unloading/lifting device at issue are located in the state of Illinois. However, as this court observed in *Terra*, the considerations of witness convenience include more than the number of witnesses who might be inconvenienced by one forum or the other; the court must also consider "the 'quality and materiality of the testimony of said witnesses,' whether such witnesses were "unwilling" to appear in one forum or the other, whether deposition testimony would be unsatisfactory, and whether the use of compulsory process would be necessary or possible." *Terra*, 922 F. Supp. at 1359 (quoting *Scheidt*, 956 F.2d at 966); *see Moses v. Business Card Express, Inc.*, 929 F.2d 1131, 1138-39 (6th Cir. 1991) (considering a transfer motion in which a forum selection clause figured, and finding, "There is no reason why the testimony of witnesses could not be presented by deposition."), *cert. denied*, 502 U.S. 821 (1991).

Although Wal-Mart asserts that the inconvenience of its non-party witnesses weighs in favor of transfer, its assertion is unsubstantiated. Wal-Mart has not submitted any information bearing on the number of witnesses who may be inconvenienced. Nor has Wal-Mart submitted any information concerning the quality or materiality of these witnesses' testimony. Similarly, Wal-Mart has not indicated those witnesses who would be unwilling to come to Iowa voluntarily, making compulsory process necessary. *See Scheidt*, 956 F.2d at 966 (explaining that it is necessary that some factual information relative to the materiality of witness testimony be provided to the trial court). Mere allegations, unsupported by affidavits or other proof, are insufficient to justify a transfer of venue. *Riverdell Forest Prods., Ltd. v. Canadian Pac. Ltd.*, 2 F.3d 990, 993 (10th Cir. 1993). Admittedly, non-party Illinois witnesses may be unwilling to travel to trial in Iowa, and a forum in Iowa may not be able to compel the appearance of non-party Illinois witnesses for

trial, *Chrysler Credit Corp.*, 928 F.2d at 1516 (one criterion is availability of compulsory process for witnesses), but there is no showing that those witnesses, or any other essential witnesses, cannot be compelled to appear for discovery pursuant to the wide reach of discovery under the Federal Rules of Civil Procedure, nor is there any convincing showing that the testimony of any necessary witnesses cannot be adequately presented by deposition, either read into the record from a transcript, or in the form of a videotaped deposition played for a jury. *Terra*, 922 F. Supp. at 1361 (citations omitted).[1]

Furthermore, even assuming that Wal-Mart did substantiate its assertion that several of the witnesses who would testify relating to the liability aspect of Martin's claims are located in Illinois, Martin stated, in his affidavit, that several of the witnesses, including his family and friends, who would testify relating to the damages aspect of his claims are located in Iowa. Consequently, the court finds that the balance of the convenience of witnesses to be in equipoise and does not support transfer.

c. The accessibility to records and documents

Wal-Mart further points out that, all documents pertaining to the unloading/lifting device and the actual device itself that gave rise to the present claim are located in the state of Illinois. Martin argues that simply telling the court that all documents and the physical evidence pertaining to this matter are located in Illinois, without proof, is insufficient for this court to grant a transfer.

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[1]In *Terra*, the undersigned explained, "[t]he fact that a party may have to make choices about which witnesses to present "live" at a trial in a distant forum, and which to present by deposition, does not, in this court's view, amount to undue convenience. Indeed, there might be salutary benefits of such logistical difficulties in paring an unwieldy list of witnesses, used to impress the court with the potential inconvenience of a proposed forum, to those necessary to prove the party's case, once the forum is decided.

location of documents is no longer entitled to much weight in the transfer of venue analysis. *See In re Triton Ltd. Securities Litigation*, 70 F. Supp.2d 678, 690 (E.D. Tex. 1999) (stating that the location of documents is entitled to little weight in this analysis, given the ease with which they can now be copied); *J.I. Kislak Mortg. Corp. v. Connecticut Bank and Trust Co.*, N.A., 604 F. Supp. 346, 348 (S.D. Fla. 1985) (citing *American Standard, Inc. v. Bendix Corp.*, 487 F. Supp. 254, 264 (W.D. Mo. 1980); *Houk v. Kimberly-Clark Corp.*, 613 F. Supp. 923, 932 (W.D. Mo. 1985). As one district court has correctly observed: "[a]s is the case with witnesses, general allegations that transfer is needed because of books and records are not enough," for "[t]he moving papers must show the location and the importance of the documents in question." *Standard Office Systems of Fort Smith, Ark. v. Ricoh Corp.*, 742 F. Supp. 534, 538 (W.D. Ark. 1990) (quoting 15 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3853, pp. 278-79 (2d ed. 1987)); *see Munski v. J.R. United Indus., Inc.*, 756 F. Supp. 379, 381 (N.D. Ill. 1991); *Lieb v. American Pac. Int'l, Inc.*, 489 F. Supp. 690, 697 n.10 (E.D. Pa. 1980).

Here, Wal-Mart has not informed the court of the specific number or amount of relevant documentary evidence currently situated in Illinois. Moreover, as Martin points out, Wal-Mart has not proved that the location of the pertinent documents and physical evidence in Illinois, especially in a personal injury action, makes the Iowa forum inconvenient. *See Dupre v. Spanier Marine Corp.*, 810 F. Supp. 823, 826-827 (S.D. Tex. 1993) (explaining that a personal injury action is typically not such an action where the location of books and records is of paramount importance to whether a case should be transferred, and further stating that it would be "disingenuous for a moving party to assert otherwise unless predicated upon a specific recitation of the location and importance of the relevant documents") (citing *Standard Office Sys. v. Ricoh Corp.*, 742 F. Supp. 534, 538 (W.D. Ark.1990); *Crawford & Co. v. Temple Drilling Co.*, 655 F. Supp. 279, 281 (M.D. La.1987). Therefore, the court concludes that this factor does not tip the balance of

convenience in favor of transfer.

d. The place where the conduct complained of occurred

The next factor that must be considered by the court is the location where the conduct complained of occurred. On this factor, Wal-Mart asserts that the acts or omissions on which Martin's claims are based occurred at or near the Wal-Mart store located in Illinois. Specifically, Wal-Mart points out that Martin's alleged injuries occurred at the Wal-Mart store in Illinois while he was using an unloading/lifting device that was supplied by that store. Martin argues that Wal-Mart has not provided this court with any facts indicating the Illinois location in this case has any special evidentiary significance.

In this case, the place in which the conduct complained of occurred is Illinois. This factor alone, however, is not dispositive. As this court explained in *Terra*: "the court finds that place of occurrence alone has little to do with actual convenience of the parties conducting litigation as the result of an event when there is no especial evidentiary significance to the location of the catastrophe and proof of liability." *Terra*, 922 F. Supp. at 1361. Here, Wal-Mart has failed to demonstrate that there is especial evidentiary significance to the location of the Wal-Mart store in Illinois or the unloading/lifting device. Therefore, the court concludes that this factor weighs only marginally in favor of transfer

e. Applicable substantive law

The court finally turns to the applicability of each forum state's substantive law. The court recognizes that this convenience factor does seem to point to Illinois as the proper venue. *See Scheidt*, 956 F.2d at 966. However, even conceding this to be the case, based on this court's previous application of law from other states, the court has little doubt that this court can apply Illinois law as competently as a federal court in Illinois.

Thus, the court concludes that the balance of all of these factors does not portent that the proposed transferee district is the more convenient forum for the litigation. *See Scheidt*, 956 F.2d at 966. Because it is Wal-Mart's motion to transfer, Wal-Mart has the

burden of proving that transfer is appropriate, and in viewing the balance of convenience most favorably to Martin to see if Wal-Mart has met its burden, the court finds a marginal shift in the balance of convenience towards the Illinois forum, but no decisive shift towards that forum. Because disposition of a motion to transfer should not merely shift the inconvenience from one party to the other, the court concludes that Wal-Mart has thus far failed to meet its burden of proving that transfer is appropriate in this case. *See Terra*, 922 F. Supp. at 1362; *Brower v. Flint Ink Corp.*, 865 F. Supp. 564, 568 (N.D. Iowa 1995) (citing *Houk v. Kimberly-Clark Corp.*, 613 F. Supp. 923, 927 (W.D. Mo. 1985)); *accord Robinson v. Giamarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) (district court did not err in refusing to transfer case where it found transferring case "would merely shift inconvenience from" one party to the other); *Scheidt*, 956 F.2d at 966 ("merely shifting the inconvenience from one side to the other . . . obviously is not a permissible justification for a change of venue."). The court must therefore consider other factors listed above in the § 1404(a) analysis to ascertain whether they favor transfer of this case to Illinois.

2. The Interest Of Justice Factors

a. The plaintiff's choice of forum

In this case, Martin has chosen to litigate his claims in Iowa. Given that Martin resides in O'Brien County, Iowa, this choice of forum is completely understandable. *See Terra*, 119 F.3d at 695 ("federal courts give considerable deference to a plaintiff's choice of forum. . ."); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995) (plaintiff's choice of forum "is entitled to substantial consideration. . ."); *Scheidt*, 956 F.2d at 965 ("'[u]nless the balance is strongly in favor of the movant the plaintiff's choice of forum should rarely be disturbed.'") (quoting *William A. Smith Contracting Co. v. Travelers Indem. Co.*, 467 F.2d 662, 664 (10th Cir. 1972)); *Kovatch v. Rockwood Sys. Corp.*, 666 F. Supp. 707, 708 (M.D. Pa. 1986) ("Normally, plaintiff's choice of forum will not be disturbed unless the movant for transfer demonstrates that the balance of convenience and

justice weighs heavily in favor of transfer."); *Thermo-Cell Southeast, Inc. v. Technetic Indus., Inc.*, 605 F. Supp. 1122, 1124 (N.D. Ga. 1985) ("plaintiff's choice of forum ordinarily should not be disturbed unless the movant for transfer demonstrates that the balance of convenience and justice weighs heavily in favor of transfer."); *Exide Corp. v. Electro Servs., Inc.*, 596 F. Supp. 1404, 1405 (E.D. Pa. 1984) (It is well-established that plaintiff's choice of forum is a "paramount consideration" and "should not be lightly disturbed.") (quoting *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3rd Cir. 1970)). Moreover, "when plaintiff's home forum has been chosen, it is reasonable to assume that this choice is convenient and plaintiff's selection is entitled to greater deference when plaintiff chooses the home forum." *Kovatch*, 666 F. Supp. at 708 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981)). However, while "a plaintiff's choice of forum should be given weight when deciding whether to grant a motion to change venue, this factor is not dispositive." *Lewis v. ACB Bus. Serv., Inc.*, 135 F.3d 389, 413 (6th Cir. 1998); *see Jumara*, 55 F.3d at 879. In light of this case law, this factor weighs heavily against the court transferring this matter to Illinois.

b. Forum selection clause

The court need not devote any time discussing this factor because it is inapplicable to the case at bar.

c. The comparative costs of litigating in each forum

The next factor the court must consider in its transfer calculus is the comparative costs to the parties of litigating in each forum. As noted previously, "where disparity exists between the parties, such as an individual plaintiff suing a large corporation, the relative means of the parties may be considered." *Berman v. Informix Corp.*, 30 F. Supp. 2d 653, 659 (S.D.N.Y. 1998) (citing *Hernandez v. Graebel Van Lines*, 761 F. Supp. 983, 989 (E.D.N.Y. 1991); *see also Pall Corp. v. PTI Technologies, Inc.*, 992 F. Supp. 196, 200 (E.D.N.Y. 1998) ("The court may also consider . . . whether a disparity between the

parties exists with respect to their relative means, such as in the case of an individual plaintiff suing a large corporation").

In this case, Martin states that although he has worked as a truck driver for twenty years, since being injured he has been unable to work in this type of position. Thus, he contends that his financial resources are limited. Specifically, Martin asserts that "[i]f I was required to travel extensively to Illinois to pursue this claim, it would be a financial hardship for me." Although Martin's assertion that he will experience extreme financial hardship if forced to litigate in Illinois may undoubtedly be true, it is unsubstantiated. The court recognizes that the parties' relative financial ability to undertake a trial in any particular forum is a relevant consideration, however, in this case, Martin merely makes conclusory references to his financial situation. *Id; Cambridge Filter Corp. v. Int'l Filter Co.*, 548 F. Supp. 1308, 1311 (D. Nev. 1982); *Vaughn v. American Basketball Assoc.*, 419 F. Supp. 1274, 1276-77 (S.D.N.Y. 1976). Notwithstanding, no showing has been made by Wal-Mart that litigating this action in Iowa would impose an undue hardship on it. *See Hernandez*, 761 F. Supp. at 989 (according factor little or no significance absent showing of disparity of means between corporate plaintiff and individual defendant). Thus, neither party has offered the court any estimates as to how much more it would cost to try the case in the other party's forum of choice. While Wal-Mart would have higher travel costs for its witnesses if it is required to litigate in Iowa, Martin would incur increased travel costs if forced to litigate in Illinois. Common sense, however, dictates that Wal-Mart is in a better position to assume costs than a truck driver, who currently is unable to work. Thus, the court finds that this factor tips decidedly in favor of Martin, and does not support a transfer.

d. Judicial economy

Neither party raised judicial economy as a factor that the court should consider in its transfer analysis. Therefore, the court will not devote any time to this factor.

e. Conflict of law issues and advantage of local court

The court is convinced that it can apply Illinois law, if need be, as competently as a federal court in Illinois. Therefore, the court finds that these factors do not weigh in favor of transfer.

f. Other factors

The court sees no difficulty in either party enforcing a favorable judgment on its claims in either federal forum, and thus this factor does not weigh in favor of transfer. Additionally, the court does not find any relative advantages or obstacles to a fair trial for either party in either forum.

The court finds that the balance of the interest of justice factors does not support transferring this case to Illinois. Therefore, the court concludes that Wal-Mart has failed to meet its burden to show that transfer of this case to the Southern District of Illinois is appropriate and its motion to transfer is thereby denied.

III. CONCLUSION

Taking into account all of the foregoing factors, the court concludes that transfer of this action to Illinois would only shift the inconvenience and burdens of litigation from Wal-Mart to Martin. Wal-Mart has failed to make the strong showing that is necessary in order to warrant disturbing Martin's choice of forum. Therefore, the court holds that upon weighing the various factors enumerated in or relevant under the transfer statute, 28 U.S.C. § 1404(a), defendant Wal-Mart has failed to meet its burden to show that transfer of this case is appropriate. Accordingly, Wal-Mart's motion to transfer is **denied**. Furthermore, the court reiterates that Wal-Mart's motion to dismiss for *forum non conveniens* is also **denied**.

IT IS SO ORDERED.

DATED this 9th day of October, 2000.

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MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA